IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos. 29064, 29069, 29070, 29073, 29076, 29079, 29080, 29083, 29085, 29086, 29089, 29091, 29093, 29095 to 29097 & 29099 of 2019

W.P. No. 29064 of 2019

T. Velvalli

... Petitioner in

Vs

1. Union of India,
   Represented by its Secretary,
   Labour and Employment,
   Department, New Delhi – 1.

2. Central Board of Trustee for Employees
   Provident Fund, Employees Provident
   Fund Organisation, Bharisya Nithi Bhavan,
   Wazirpur, New Delhi – 110 052.

3. Central Provident Fund Commissioner -I,
   (Pension), Bhaisya Nidhi Bhavan,
   14, Bhikaji -Gama Place, New Delhi – 110 066.

4. The Regional Provident Fund Commissioner
   Employees' Provident Fund Organisation,
   No. 37, Opp. Swagar Hotel,
   Royapettah High Road,
   Chennai 600 014.

5. The Director
   Kalashetra Foundation,
   Thiruvanmiyur.

... Respondents

Prayer : Writ Petitions filed Under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents 1 to 4 to permit the petitioner to make future pension contributions and the difference in pension contribution for the past period, based on the actual salary, by allowing her and fifth respondent to exercise joint option and to pay her pension from the date of her retirement based on the actual salary, after adjusting the difference in Pension Contribution based on the actual salary for the period from the date of her enrollment to the Provident fund from her PF Account or by receiving the difference amount from if the amount lying to the credit of the PF account is not sufficient towards the difference in pension contribution based on the actual salary for past period, by providing her a calculation with regard to the difference in pension contribution for the past period as per the judgment of the Hon'ble Supreme Court reported in 2019(1) LLJ 494 (Ker) as confirmed by the Hon'ble Supreme Court by an order dated 01.04.2019 in SLP (C) No. 9610/2019 and the judgment of this Court reported in 2019(2) LLJ 672 (Mad), without reference to the Employees' Pension (Amendment) Scheme, 2014 and the Employees' Pension (5th Amendment) Scheme, 2016, award costs.

Amended Prayer:

"For the aforementioned reasons, it is prayed that this Court may be pleased to issue appropriate writs orders or directions and in particular issue a writ in the nature of Certiorarified Mandamus after calling for records pertaining to the order dated 28.11.2019 passed by the fourth respondent in TN/RO/CHN-II/15864/GR-6/Accts/Reg1/2019, quash the same and consequently direct the respondents 1 to 4 to permit the petitioner to make both PF and Pension contributions for the past period and in future based on the actual salary by allowing her and the 5th respondent to make a joint option in this regard under para 26(6) of the Employees' Pension Scheme and the proviso to para 11 (3) of the Employees' Pension Scheme, 1995, by transferring and adjusting the required amounts towards difference in pension contribution with interest from her PF account and by receiving the balance amount if any from her and by providing him a calculation in this regard in advance and to pay and sanction him monthly pension based on her actual salary, from the date of her retirement/superannuation, based on the judgment of the Hon'ble Supreme Court reported in 2018 14 SCC 809, the judgment of the Kerala High Court reported in 2019 (1) LLJ 494 (Ker) as confirmed by the Hon'ble Supreme Court by an order dated 01.04.2019 in SLP (C) No. 9610/2019 and the judgment of this Court reported in 2019 (2) LLJ 672 (Mad), without reference to the Employees' Pension (Amendment) Scheme, 2014 and the Employees' Pension (5^{th} Amendment) Scheme, 2016, award costs.

(Prayer amended by order dated
18.11.2022 by SMSJ)

For Petitioners : Mr. V. Ajay Khose

For Respondents : M/S. N.K. Nithilarani
CGSC for first respondent
M/S Ramu Vishnu
for respondents 2 to 4

COMMON ORDER

The petitioner filed the writ petition for a direction to respondents 1 to 4 to permit the petitioner to make future pension contributions and the difference in pension contribution for the past period, based on the actual salary, by allowing her and fifth respondent to exercise joint option and to pay her pension from the date of her retirement based on the actual salary, after adjusting the difference in Pension Contribution based on the actual salary for the period from the date of her enrollment to the Provident fund from her PF Account or by receiving the difference amount from if the amount lying to the credit of the PF account is not sufficient towards the difference in pension contribution based on the actual salary for past period, by providing her a calculation with regard to the difference in pension contribution for the past period as per the judgment of the Hon'ble Supreme Court reported in 2019(1) LLJ 494 (Ker) as confirmed by the Hon'ble Supreme Court by an order dated 01.04.2019 in SLP (C) No. 9610/2019 and the judgment of this Court reported in 2019(2) LLJ 672 (Mad), without reference to the Employees' Pension (Amendment) Scheme, 2014 and the Employees' Pension (5th Amendment) Scheme, 2016, award costs.

2. During the pendency of the writ petition, the respondents rejected the claim of the writ petitioner and therefore the petitioner filed an amendment petition to amend the prayer as follows:

> *"For the aforementioned reasons, it is prayed that this Court may be pleased to issue appropriate writs orders or directions and in particular issue a writ in the nature of Certiorarified Mandamus after calling for records pertaining to the order dated 28.11.2019 passed by the fourth respondent in TN/RO/CHN-II/15864/GR-6/Accts/Reg1/2019, quash the same and consequently direct the respondents 1 to 4 to*

permit the petitioner to make both PF and Pension contributions for the past period and in future based on the actual salary by allowing her and the 5th respondent to make a joint option in this regard under para 26(6) of the Employees' Pension Scheme and the proviso to para 11 (3) of the Employees' Pension Scheme, 1995, by transferring and adjusting the required amounts towards difference in pension contribution with interest from her PF account and by receiving the balance amount if any from her and by providing him a calculation in this regard in advance and to pay and sanction him monthly pension based on her actual salary, from the date of her retirement/superannuation, based on the judgment of the Hon'ble Supreme Court reported in 2018 14 SCC 809, the judgment of the Kerala High Court reported in 2019 (1) LLJ 494 (Ker) as confirmed by the Hon'ble Supreme Court by an order dated 01.04.2019 in SLP (C) No. 9610/2019 and the judgment of this Court reported in 2019 (2) LLJ 672 (Mad), without reference to the Employees' Pension (Amendment) Scheme, 2014 and the Employees' Pension (5th Amendment) Scheme, 2016, award costs.

3. In respect of the order impugned passed by the respondents, the issues during the relevant point of time was pending before the Hon'ble Supreme Court of India. The reasons stated in the order impugned is that the matter was subjudiced before the Hon'ble Supreme Court of India and therefore the claims set out by the petitioners cannot be considered.

4. The learned counsel for the writ petitioners now brought to the notice of this court that the Hon'ble Supreme Court decided the issues in the case of ***Employees Provident Fund Organisation and Another, etc vs Sunil Kumar B and others, etc. reported in 2022 SCC online SC 1521.*** Thus, the issues are no more res integra and the Hon'ble Apex Court of India granted the relief in paragraph 46 of the judgment which reads as under:

> *'44. We accordingly hold and direct:*
>
> *'(i) The provisions contained in the notification no. G.S.R.*
>
> *609(E) dated 22nd August 2014 are legal and valid. So far as present members of the fund are concerned, we have read down certain provisions of the scheme as applicable in their cases and we shall give our findings and directions on these provisions in the subsequent subparagraphs.*
>
> *(ii) Amendment to the pension scheme brought about by the notification no. G.S.R. 609(E) dated*

22 nd August 2014 shall apply to the employees of the exempted establishments in the same manner as the employees of the regular establishments. Transfer of funds from the exempted establishments shall be in the manner as we have already directed.

(iii) The employees who had exercised option under the proviso to paragraph 11(3) of the 1995 scheme and continued to be in service as on 1st September 2014, will be guided by the amended provisions of paragraph 11(4) of the pension scheme.

(iv) The members of the scheme, who did not exercise option, as contemplated in the proviso to paragraph 11(3) of the pension scheme (as it was before the 2014 Amendment) would be entitled to exercise option under paragraph 11(4) of the post amendment scheme. Their right to exercise option before 1st September 2014 stands crystalised in the judgment of this Court in the case of R.C. Gupta (supra). The scheme as it stood before 1st September 2014 did not provide for any cut off date and thus those members shall be entitled to exercise option in terms of paragraph11(4) of the scheme, as it stands at present. Their exercise of option shall be in the nature of joint options covering preamended paragraph 11(3) as also the amended paragraph 11(4) of the pension scheme.

There was uncertainty as regards validity of the post amendment scheme, which was quashed by the aforesaid judgments of the three High Courts. Thus, all the employees who did not exercise option but were entitled to do so but could not due to the interpretation on cutoff date by the authorities, ought to be given a further chance to exercise their option. Time to exercise option under paragraph 11(4) of the scheme, under these circumstances, shall stand extended by a further *period of four months. We are giving this direction in exercise of our jurisdiction under Article 142 of the Constitution of India.*

Rest of the requirements as per the amended provision shall be complied with.

(v) The employees who had retired prior to 1 st September 2014 without exercising any option under paragraph 11(3) of the preamendment scheme have already exited from the membership thereof. They would not be entitled to the benefit of this judgment.

(vi) The employees who have retired before 1st September 2014 upon exercising option under paragraph 11(3) of the 1995 scheme shall be covered by the provisions of the paragraph 11(3) of the pension scheme as it stood prior to the amendment of 2014.

(vii) The requirement of the members to contribute at the rate of 1.16 per cent of their salary to the extent such salary exceeds Rs.15000/ per month as an additional contribution under the amended scheme is held to be ultra vires the provisions of the 1952 Act. But for the reasons already explained above, we suspend operation of this part of our order for a period of six months. We do so to enable the authorities to make adjustments in the scheme so that the additional contribution can be generated from some other legitimate source within the scope of the Act, which could include enhancing the rate of contribution of the employers. We are not speculating on what steps the authorities will take as it would be for the legislature or the framers of the scheme to make necessary amendment. For the aforesaid period of six months or till such time any amendment is made, whichever is earlier, the

employees' contribution shall be as stop gap measure.

The said sum shall be adjustable on the basis of alteration to the scheme that may be made.

(viii) We do not find any flaw in altering the basis for computation of pensionable salary.

(ix) We agree with the view taken by the Division Bench in the case of R.C. Gupta (supra) so far as interpretation of the proviso to paragraph 11(3) (preamendment) pension scheme is concerned. The fund authorities shall implement the directives contained in the said judgment within a period of eight weeks, subject to our directions contained earlier in this paragraph.

(x) The Contempt Petition (C) Nos.19171918 of 2018 and Contempt Petition (C) Nos. 619620 of 2019 in Civil Appeal Nos. 1001310014 of 2016 are disposed of in the above terms.

5. Thus, the respondents are directed to extend the benefit of the Hon'ble Supreme Court of India. Consequently the impugned order passed by the respondents in proceedings TN/RO/CHN-II/15864/GR-6/Accts/Reg1/2019, dated 28.11.2019 are quashed and the respondents are directed to consider the case of all the petitioners, based on the judgment of the Hon'ble Supreme Court of India cited supra, by verifying the service particulars and the other details of the petitioners and if they are qualified as per the rules in force.

6. With these directions, all the writ petitions are allowed. No costs.

18.11.2022

mrn
Index : Yes / No
Speaking order / Non-Speaking order

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S.M.SUBRAMANIAM, J.

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